Docket No. 01-0120
Staff Ex. 2.01

REBUTTAL TESTIMONY

OF

MELANIE K. PATRICK, PH.D.

POLICY ANALYST

STAFF OF THE TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

RESOLUTION OF DISPUTED ISSUES

PURSUANT TO CONDITION 30 OF

THE SBC/AMERITECH MERGER ORDER

DOCKET NO. 01-0120

AUGUST 2, 2001

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Q. Please state your name and business address.

A. My name is Melanie K. Patrick, and my business address is 527 East Capitol Ave., Springfield, Illinois 62701.

Q. Are you the same Melanie K. Patrick who provided direct testimony in this docket?

A. Yes, I am.

1 Purpose of Testimony

Q. What is the purpose of your rebuttal testimony in this proceeding?

A. The purpose of my testimony is to both assess information that was provided too late to be included in my direct testimony, and to respond to the direct testimony provided by several of the parties in this proceeding. I also review several of my recommendations presented in direct testimony.

Q. What materials have you reviewed in preparing this rebuttal testimony?

A. In addition to the direct testimony filed by the parties in this docket, I also reviewed the responses provided by AT&T and Ameritech to Staff DR questions, and the additional information provided by Ameritech pursuant to this docket.

Q. Is there anything you believe you left out in your analysis of the Ameritech remedy plan?

A. Yes. In his testimony, Ameritech witness Dr. Daniel Levy reviews the Ameritech treatment of performance tests for which there are few data points. While I noted that the Ameritech remedy plan does have exceptions for assessing small sample sizes, Dr. Levy provides more detail in his direct testimony. The Ameritech remedy plan directs the use of permutation testing in place of the modified z-test for small sample sizes, and this methodology is appropriate in the settings in which it is used.

Dr. Levy's description of the treatment for small sample sizes highlights his later criticism of the CLEC remedy plan for not providing separate treatment for small sample sizes, which is a fair criticism of the CLEC remedy plan. However, I am left wondering why Dr. Levy did not apply the small sample methodology required in the Ameritech remedy plan in some of his examples where he attempts to highlight the different treatment resulting from application of specific tests provided for in the two remedy plans (see Tables 4 and 5, pp. 47-48). This failure of Dr. Levy to apply Ameritech's methodology, as described, skews the results of the comparisons reflected in these tables. In addition, Dr. Levy asserts on p. 36, line 17, that small samples comprise two-thirds of all remedy tests performed. However, he does not provide any evidence for this assertion, or indicate if his observation covers all months or is applicable to only a few months, or if his observation applies to all performance measures or only remedy-eligible measures. I was able to check Dr. Levy's estimate using December 2000 performance data, but I am

unable to verify his assertion for any other time periods. Because I cannot make any assessment about the overall validity of his claim, I cannot make any predictions about whether the small sample sizes would comprise two-thirds of the tests performed by Ameritech Illinois in the future.

Q. Is there another clarification you would like to make regarding your earlier statements, in light of your review of the direct testimony filed to date?

A. Yes. In my direct testimony, I assessed the remedy amounts associated with the Ameritech remedy plan. My assessment was focused on the so-called "remedy-eligible" measurements, all of which carry a label indicating their importance (high, medium, or low). I neglected to point out that there are performance measurements that carry a label of "diagnostic" (or "none"). The diagnostic label indicates that performance information is collected about that measure, and performance tests may be generated about that measure, but no remedies are assessed for that measure. In his direct testimony, Ameritech witness Mr. Sal Fioretti does a good job of describing the different types of measurements (pp. 2-4). My observation here is intended as a clarification of my earlier statements regarding remedy amounts.

2 Review of Proxy Data Estimates

Q. Please comment on the proxy data.

A. Two of the parties to this docket entered an agreement for provision of proxy data, which represented Ameritech's performance in providing service to the CLECs. The data was based on actual performance data recorded during the final months (September to December) of 2000 (see, e.g., direct testimony of Ameritech witness Dr. Levy, p. 41). Pursuant to the agreement between AT&T and Ameritech, Ameritech created a proxy dataset that both represents Ameritech's actual performance and masks the identity of the CLECs doing wholesale business with Ameritech. Once the proxy data set was created, Ameritech used the proxy data to demonstrate the Ameritech remedy plan, and AT&T used the same proxy data to demonstrate the CLEC remedy plan.

I have a few comments about the development of the proxy data. The proxy data set approximates the performance achieved by Ameritech during the final months of 2000, while masking company-sensitive information for CLECs and for Ameritech. To mask the identity of the CLECs doing business with Ameritech, Ameritech applied a transformation scheme to its actual performance data. As I understand the transformation scheme, as developed and agreed to by the parties, Ameritech was required to complete two main tasks for each performance measurement, each month, in order to produce the proxy data. The first task was to re-assign the volume of services purchased by each CLEC. This task served to preserve the sample size information for each performance measurement, while making it harder to identify which CLECs might be doing business with Ameritech based on the volume of services purchased in a given month. As a result, accurate information about sample sizes, or 'N', was available for each of the parties in applying their test statistic methodology. The second task performed for each

performance measurement, each month, was to alter the actual performance information by injecting a degree of variability into the performance data. That is, rather than reporting actual performance information, Ameritech essentially re-created their performance data based on the rules agreed to by Ameritech Illinois and AT&T . For the purposes of comparing the CLEC performance data to Ameritech's retail and wholesale affiliate parity tests, Ameritech performed similar transformations to their own performance data, making adjustments to both the information about retail sample sizes and retail performance. Ameritech witness Dr. Levy discusses the source of the proxy dataset in his direct testimony, on p. 41, lines 9-16.

While I reviewed the results each of the parties presented, I based my analysis of the Ameritech remedy plan, as presented in my direct testimony, on responses provided by Ameritech to staff data requests that employed actual performance data. My data requests were designed to determine how changes to the Ameritech remedy plan would affect the remedy calculations. Nevertheless, the proxy data will provide a useful vehicle for comparing what each party has to say about their own plan. I will review the results of each plan, based on this proxy data, below.

Q. Please describe the overall penalty levels contained in the estimate of the CLEC plan, using proxy data, provided by AT&T.

A. In responding to DR question MKP4, as presented to AT&T, AT&T provides the following estimate of overall penalty levels created by employing the CLEC remedy plan.

Using proxy data, as provided by Ameritech, and applying the CLEC plan, AT&T estimates that the performance provided by Ameritech to CLECs during the final three months of 2000 would have resulted in approximately $78 million in Tier 1 remedies, credited to CLECs, and $75 million in Tier 2 remedies, payable to the state. In spreadsheets provided to the Commission on July 2, AT&T presents their estimate of the financial impact of employing the "parity with a floor" standard. For the final three months of 2000, this aspect of the CLEC plan would result in an additional $33 million in penalties paid by Ameritech.

Q. In your direct testimony, you reviewed the FCC recommendation for a "meaningful" level of annual penalties (36% of net return). Please discuss the overall penalty levels described above in light of the FCC recommendation.

According to AT&T using proxy data, the resulting combined Tier 1 and Tier 2 remedy estimates for the CLEC remedy plan for October, November, and December 2000 would total nearly $154 million. The CLEC remedy plan also calls for an additional $33 million in penalties resulting from the "Parity with a Floor" standard. Based on AT&T's estimates, if future service performance and service demand remained the same as reflected in the proxy data set, Ameritech would reach the FCC recommended annual remedy amount in less than six months. While the CLEC remedy plan treats the FCC recommendations level as a procedural threshold, this treatment has not been adopted yet by the Commission. Given the information provided by AT&T, it seems likely that Ameritech would reach this procedural threshold in less than half a year. If the FCC has

determined that 36% of net return represents an annual level of penalties that will provide sufficient incentive for an ILEC to provide service to its wholesale competitors that is of "good" quality, allowing CLECs to be competitive in the marketplace, what will happen if Ameritech reaches this level of penalties in less than half a year? If the Commission does not adopt the CLEC treatment of the annual remedy cap, and the 36% figure represents the total amount of penaltics that Ameritech would face within a given year, then the CLEC plan would seem to provide little incentive for Ameritech Illinois to improve their service performance. Ameritech would be able to provide bad service, knowing in advance how much their total annual penalties would be, reach the annual cap, and then continue providing bad service throughout the rest of the year without needing to pay additional penalties.

I also want to note that the information provided by AT&T, pursuant to my data request, indicates different overall penalties than the information provided in the direct testimony of AT&T witness Dr. Michael Kalb. In reviewing pp. 40-50 of Dr. Kalb's testimony, it is apparent that the penalties he calculates and reports are even higher than the calculations provided to the Commission on June 29. I believe that the Tier 2 penalty amounts that he reports in his testimony are the source of the different overall penalties. While the number of tests performed and failed are the same, the Tier 2 penalties reported in Dr. Kalb's testimony on p. 49 are larger than the penalty amounts calculated and reported to the Commission pursuant to a staff data request. Dr. Kalb should provide an explanation for this difference, as his testimony does not acknowledge that different penalty estimates were reported for the Tier 2 calculations.

Q. For the purposes of comparison of the Ameritech and CLEC remedy plans, please review the estimates of the impact of the Ameritech remedy plan, as provided by Ameritech, using proxy data.

A. On June 22, pursuant to the schedule set by the hearing examiners in this docket, Ameritech provided results of applying their remedy plan to the proxy data produced pursuant to an agreement reached between Ameritech and AT&T. Using this proxy data and applying their remedy plan, Ameritech estimates that their performance to CLECs during the final three months of 2000 would have resulted in approximately $7.9 million in Tier 1 remedies, credited to CLECs. Ameritech provides a 2-month estimate of Tier 2 remedies, payable to the state, for November and December 2000, of approximately $3.6 million.

Using these estimates as a basis, and assuming that future service performance and service demand remained the same as reflected in the proxy data set, the projected annual remedies resulting from the Ameritech remedy plan would appear to be more than $53 million.[1] While the estimates of the CLEC remedy plan, using the same proxy data, call for penalties that might arguably be called unusually high, the estimates of the Ameritech remedy plan exhibit the opposite problem. Viewed in light of the FCC's estimate of the level of annual penalties needed to impact behavior, the annual remedies represented by

[1] ($3.6 million * 6) + ($7.9 million * 4)

Ameritech's estimate of their own plan, using proxy data, seem inadequate to provide an incentive for Ameritech provide service to their competitors that is of "good" quality.

Q. What do you observe about the application of proxy data in these estimates provided by AT&T and Ameritech.

A. 1. Proxy data seems to provide estimates that are higher than those produced by actual performance data. Compare Ameritech's estimate of their plan using proxy data to Row 2 of Table 1 and Row 2 of Table 3 in Attachment 2.1 of Staff Ex. 2.0. There may have been something in the transformation scheme used to create the proxy data that produces high estimates, at least when applying the Ameritech plan. While the transformation scheme was agreed to by the other parties, Staff declined to make use of proxy estimates, preferring to focus on results based on actual performance data. The information used to create the assessments of Staff's proposals, including the Staff Alternative Scenarios, as described in Staff Exhibit 2.0 and presented in Attachment 2.1, were based on actual data, instead of proxy data.

2. AT&T's plan results in estimates that are so high as to be possibly non-comparable to the Ameritech estimates. I can imagine three sources that could impact the AT&T estimates. First, the proxy data itself might result in over-estimation when applying the CLEC plan, as noted above regarding the Ameritech plan. This over-estimation could be the result of differences in the two plans. For example, the CLEC remedy plan may penalize excessive variance, or service provision of extremely variable quality (which

could be a reflection of the data transformations performed by Ameritech in creating the proxy data), which might be an advantage of the CLEC remedy plan. Second, in reviewing the applications using proxy data created by both Ameritech and AT&T, it becomes clear that AT&T applied their remedy calculations to all performance measures, regardless of whether they were considered "diagnostic" or not. As a result, AT&T calculates remedies for all test failures, regardless of whether the measures were eligible for remedies in Illinois. It is unclear how much of their total remedies resulted from test failures on diagnostic measures, and whether these increased penalties, which I believe to be an artificial inflation of the total remedies called for in the CLEC plan, are actually intentionally included by AT&T in creating their estimate of the CLEC remedy plan using the proxy data. In his direct testimony, Ameritech witness Dr. Levy also discusses this and other apparent errors in the estimates provided by AT&T of the CLEC remedy plan, as based on proxy data.[2] Third, the estimates might be an accurate reflection of the impact of the CLEC remedy plan. That is, these estimates may provide an accurate picture of the plan's impact.

In light of my assessment that the remedy estimates created by AT&T based on the CLEC remedy plan, it is interesting to note that Ameritech witness Dr. Levy also provides an estimate of Ameritech's interpretation of the CLEC remedy plan that indicates that the CLEC remedy plan requires penalties even when Ameritech provides wholesale performance that meets the parity standard. While his assessment is based on an

[2] Although AT&T witness Dr. Kalb indicates that the data received by AT&T from Ameritech arrived in a form different from what was requested (see, e.g., p. 42, line 21), on this particular point Dr. Levy notes in his testimony

interpretation that required many assumptions which Staff cannot verify regarding how to apply the CLEC remedy plan, Staff takes note of this assessment, and invites AT&T to respond to Dr. Levy's estimate. There is no reason to believe that Dr. Levy's criticism is invalid. AT&T should demonstrate whether the CLEC plan requires penalties when parity service is provided.

3 Staff Recommendations

Q. Please review your overall recommendation for this docket.

A. In my direct testimony, I recommended against adoption of the CLEC remedy plan, for several reasons. My recommendation is for the Commission to order a series of modifications to the Ameritech remedy plan, and I provided descriptions and rationales for approximately eight modifications that I believe would improve the Ameritech remedy plan. In my direct testimony, I also outlined several estimates of the impact of my recommendations on overall remedy amounts, as provided to me in estimates prepared by Ameritech pursuant to Staff data requests.

3.1 Staff Recommendation against adoption of the CLEC remedy plan

Q. Upon reviewing the information referenced above, are you more or less definite about your recommendation against adopting the CLEC remedy plan?

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that the data files provided to AT&T included the information needed to identify which measures were or were not

A. In my direct testimony, I noted several problems with the CLEC remedy plan. After reviewing the information listed above, I believe that my statements in my direct testimony regarding the CLEC remedy plan are valid.

In my direct testimony, I noted that the plan filed in this docket by the CLECs specifies two vastly different test statistics. In his direct testimony, Ameritech witness Dr. Levy notes the same inconsistency in the CLEC remedy plan. The CLEC witnesses have not had a chance to reply to my request, included in my direct testimony, [3] to specify which test statistic they prefer to use in Illinois. At this time, the direct testimony filed by AT&T witness Dr. Kalb provides little additional clarification. To define the test statistic for the CLEC remedy plan, Dr. Kalb references two documents attached to his testimony as Attachment B (p. 12, line 23 – p. 13, line 1). However, his Attachment B includes only one document. Further, in his testimony, Dr. Kalb only references the "LCUG z" or modified z-statistic, and never provides the formula in the main document of his testimony.[4] It will be necessary for Dr. Kalb to provide the actual formula for the CLEC test statistic in the main body of his rebuttal testimony, in order for Staff to analyze this issue comprehensively..

A second problem with the CLEC remedy plan noted in my direct testimony is that the CLEC plan recommends an unwieldy critical value calculation that could result in an overly large probability of the occurrence of a Type I error. In his direct testimony, Dr.

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eligible for remedies (see p. 54, lines 16-20).

[3] see lines 781-782 of direct testimony filed by staff witness Dr. Melanie K. Patrick

Levy provides his analysis of the Type I error levels implied by the CLEC remedy estimates produced by AT&T using the proxy performance data. The first two columns of his Tables 2 and 3, which appear on pp. 45-46 of Dr. Levy's direct testimony, present Dr. Levy's estimate of the proportion of tests at various levels of alpha, or probability of Type I error.[5] To summarize, Dr. Levy discovers that the majority of tests for both Tier 1 and Tier 2 remedies in the CLEC remedy plan, as demonstrated by AT&T using proxy data, result in alpha levels above 5%. In fact, Dr. Levy testifies that an alarming proportion of tests have alpha levels above 25%. An alpha level that high would direct the selection of a critical value that results in "false failures" for one out of every four tests. That is, with an alpha level of 25%, the parity hypothesis can be expected to be rejected in error 25% of the time. On its face, Dr. Levy's criticism appears to be valid, although Dr. Levy should provide more information regarding the precise steps he took in estimating the alpha level of the tests he reviews. Further, Dr. Kalb (or another CLEC witness) should respond to this criticism.

Dr. Kalb does provide some information about the Type I error level implied by the CLEC remedy plan in his testimony. While Dr. Kalb argues for the "balancing" approach to Type I and Type II errors contained in the CLEC remedy plan, he also declares his support of a fixed critical value of "-1.04" (see p. 18, lines 4-5, and p. 20, lines 8-10). This recommendation could remove my objection to the unwieldy nature of the critical value formula proposed in the CLEC remedy plan. However, Dr. Kalb provides no

[4] After reviewing the document included in Dr. Kalb's Attachment B, I believe that the modified z-statistic, and the LCUG z statistic, to which he refers is the same as the modified z-statistic I described in my direct testimony.
[5] I believe that the third column in both of these tables are distracting, and not useful.

evidence regarding why this fixed critical value should be adopted, other than declaring that, at this level, "the probability of Type 1 or Type 2 errors are approximately balanced" (p. 18, line 5). As a result, I cannot at this time support Dr. Kalb's new recommendation for a fixed critical value. In my estimation, a critical value of "-1.04" would approximate a Type I error rate of 15 percent, which is a very high alpha level. In general, just as an alpha level of 5% indicates that a 5 percent failure rate will still occur when parity exists, an alpha level of 30% would imply an expectation that, in a setting of parity provision of service, 30% of the tests would fail.

Finally, in my direct testimony, I also noted that the CLEC plan has little sensitivity for industry-affecting failures, in that the plan includes a built-in "hesitation" step before requiring Tier 2 penalties. Although he emphasizes a different point, Dr. Levy provides additional support in his direct testimony for my initial observation about this failing of the CLEC plan. In comparing the results of the two plans based on proxy data, Dr. Levy describes two examples of situations in which the CLEC remedy plan results in lower estimated penalties than the Ameritech plan, one of which involves Tier 2 remedies (see Table 6, p. 50). For the example that Dr. Levy shows, the "balanced critical value" calculated by the CLEC remedy plan is extremely high, and Dr. Levy does not demonstrate the likelihood that the CLEC critical value will be that high, based on the information provided by AT&T. That is, Dr. Levy does not give us the context necessary to determine how typical or atypical his example is. But Dr. Levy does point out the requirement in the CLEC remedy plan that Tier 2 remedies are only due when the test statistic, or modified z-value, exceeds the critical value multiplied by 5/3 z*. This feature

of the CLEC remedy plan will always make it less likely that Ameritech Illinois will pay Tier 2 remedies for industry-affecting failures.[6]

Q. Please summarize this section, regarding your assessment of the CLEC remedy plan.

A. Nothing in my review of direct testimony or the application of proxy data to the CLEC remedy plan provides any reason for Staff to change their recommendation in their initial testimony, ie, that the Commission should reject the remedy plan proposed by the CLECs in this docket.

3.2 Recommended Modifications of the Ameritech Remedy Plan

Q. Please review your recommendations regarding the Ameritech Remedy Plan, in light of the information contained in direct testimony filed by the parties in this docket, and the other information referenced above.

[6] While I have found the test in the AT&T estimates of the CLEC remedy plan to which Dr. Levy refers in his example, in reviewing the AT&T estimates as provided, it is not clear whether the balanced critical values reported for the Tier 2 tests incorporate the multiplication factor (5/3 z*) required in the CLEC remedy plan or not. In other words, the information provided by AT&T pursuant to staff data request MKP4 do not include an additional column that references this procedural requirement from the CLEC remedy plan, or any other indication of how that hesitation step is applied.

A. In my direct testimony, I recommended that a series of modifications to the Ameritech remedy plan be adopted. To summarize, those recommendations are as follows:

1) End statistical testing for benchmark measurements, and adopt a "bright-line" standard.

2) Order Ameritech to adopt and employ an accurate critical values table.

3) Reject the use of the so-called "k-exclusions."

4) Make all measurements of equal, "high" importance.

5) Procedural issues related to the overall level of penalties, such as whether the annual level should be an absolute maximum, what should happen if the annual level is reached within one year, and how the annual level should be determined each year.

6) Increase the per-occurrence penalty.

7) Increase the monthly caps.

8) Convert penalty amounts to cash amounts.

In the following section, I will review some of these proposals in light of recent testimony and, where applicable, the information submitted by AT&T demonstrating the CLEC remedy plan using proxy data.

Q. Has any new information about the benchmark tests been provided in direct testimony?

A. Very little. In the direct testimony of Ameritech witness Dr. Levy, he notes that the remedy plan submitted by Ameritech Illinois does not use statistical analysis. Moreover, he provides no support for this assertion, nor any examples to illustrate his claim (see pp.

21-22). AT&T witness Dr. Kalb asserts that the treatment of benchmark measures in the Ameritech plan is "statistically unjustified" (p. 22, lines 19-22). In noting the different assertions at this time, my recommendations about adoption of the "bright-line" standard remains unchanged, and I maintain my criticism of this aspect of the Ameritech remedy plan.

Q. Please comment on your recommendation to alter the Ameritech remedy plan by removing the "k-exclusions" from their plan.

A. My recommendation holds.

In his direct testimony, AT&T witness Dr. Kalb provides support for my analysis about the "k-exclusions," as follows:

> "The K table exclusion allows Ameritech to forego paying damages on a certain number of failed measurements each month, and it therefore excuses many serious Ameritech performance violations. That the K table is an exclusion on the payment of remedies is acknowledged by Ameritech." (p. 34, lines 11-14).

Dr. Kalb follows his statements with evidence from the Texas jurisdiction, and charges that the k-exclusions employed in the remedy plan in place in that state allow the Texas ILEC, SWBT (an affiliate of Ameritech Illinois) to forego paying 40% of SWBT's report parity and benchmark violations (p.35).[7] In fact, states Dr. Kalb, the overall effect of the

[7] I have one caution regarding Dr. Kalb's overall analysis of the Ameritech remedy plan. In his review of the remedy plan proposed by Ameritech, Dr. Kalb charges that the Texas remedy plan is employed by Ameritech (p. 7, lines 13-14). My understanding is that the Texas plan was the basis for the remedy plan currently employed by Ameritech Illinois. While very similar, these plans are not identicial.

Ameritech remedy plan, as employed in Texas, actually "dilutes the exposure that SWBT faces under the plan to levels that may be accepted as a cost of doing business" (p.35, lines 5-7).

Q. What support is provided by Ameritech witnesses for this feature of the Ameritech remedy plan?

A. In his direct testimony, Ameritech witness Dr. Levy builds a case for extreme variability in the performance measurement test setting. I believe that he over-emphasizes the variable nature of the data, and undermines his case for "scientific explanation." The "science" at hand is aimed at setting aside random differences and isolating true disparity. That, essentially, is the purpose of performing the proposed performance tests. The purpose of setting the acceptable rate of a Type I error, or alpha, at the outset is to determine what probability the researcher is willing to accept that he is wrong when he rejects the null hypothesis, which in this setting would be to reject the conclusion of parity and declare that disparity has occurred. Dr. Levy states that disparity can be discovered even when two independent samples are drawn from the same ILEC data set, and uses this observation to argue against the reliability of standard practices in hypothesis testing (see p. 6, lines 8-10). Just because disparity can be found in comparing two samples drawn from the same set of performance data does not mean that the disparity is not real.

On p. 43 of his testimony, Ameritech witness Dr. Levy sets out a high standard: He argues that remedies are not to be paid unless the results demonstrate that the process used for CLEC customers differs from the process used for retail customers (emphasis added), as follows:

> "Ameritech Illinois maintains that remedies should not be paid unless the results demonstrates with a reasonable degree of scientific certainty that the process used for CLEC customers differs from the process used for retail customers. In other words, the difference in performance outcomes must come from something other than random variation or factors outside the control of Ameritech Illinois." (p. 43, line 15-p.44, line 1)

In this passage, Dr. Levy seems to be over-selling the Ameritech plan; the "scientific certainty" that he claims is less than scientific. He defines "k" as a way of distinguishing the number of individual test failures that occur due to something other than random chance, which he refers to as "real" disparity. Dr. Levy's observations about random error beg the question, if so many failures are going to be assigned to random chance, then why perform statistical tests at all? My argument is that the statistical tests used in the Ameritech remedy plan alone can be relied on to account for random chance, with at least 95% certainty. The alpha level tells us that, in a perfect world where parity service provision exists, our statistical tests will lead us wrong only 5% of the time. In sum, the probability of making a Type I error, or the alpha level, serves only to set an acceptable level of the critical value. The alpha level alone cannot guide us regarding "process" issues.

While Dr. Levy makes the claim that the Ameritech remedy plan is "based on statistical techniques that are commonly accepted in the field of statistical research" (p. 9, lines 5-7), I dispute the general applicability of features like the k-exclusions.

For the reasons set forth in my direct testimony, Ameritech should have to pay when the tests detect disparity. Therefore, the k-exclusions should be removed from the Ameritech remedy plan.

Q. In your direct testimony, you noted that the Ameritech Remedy Plan may not provide adequate incentive for Ameritech to provide high-quality service to CLECs. Did other witnesses provide information relevant to your assessment?

A. Yes. Mr. Rod Cox, of McLeodUSA, and Ms. Karen Moore, of AT&T, provide testimony that illustrates the failure of the Ameritech plan to provide adequate incentive to Ameritech to provide high-quality wholesale service to their competitors. Both Mr. Cox and Ms. Moore provide specific examples from their respective company's experience regarding both overall wholesale service provision and service provision related to individual performance measures. Their evidence seems consistent with my recommendation to modify the Ameritech plan. The experiences recounted by Mr. Cox and Ms. Moore appear to be real failures, and not statistical error. Further, these two witnesses represent CLECs that have experience with purchasing wholesale services from Ameritech, and each witness indicates that their company does quite a bit of business with Ameritech Illinois.

Q. Please summarize the information provided by Mr. Rod Cox related to his company's experience with wholesale service provided by Ameritech.

A. In his testimony, Mr. Rod Cox describes the total remedies received by his company in April 2001, which he characterizes as "paltry" (see line 19, p. 15, McLeodUSA Exhibit 1.0, public version). He notes that Ameritech avoided paying penalties on six measures due to the application of the k-exclusions provided for in the Ameritech plan. Mr. Cox also describes his company's experience with Ameritech's performance in addressing service outages for a specific product in their Southern Illinois territory (see pp. 15-16, ibid.).

Q. Please summarize the information provided by Ms. Karen Moore related to her company's experience with wholesale service provided by Ameritech.

A. In her testimony, Ms. Karen Moore emphasizes the impact of the k-exclusions employed in the Ameritech remedy plan, which has the impact of allowing Ameritech to reduce the amount of penalties paid far beyond the 5% exclusion claimed in their description. Ms. Moore states that for the three months ending in April 2001, she calculates that Ameritech Illinois should have paid more than $670 million for failed performance measurement tests. After applying the k-exclusions, Ameritech actually paid only $272 million, which she notes to be a "reduction of over 60%," a proportion that is far more than the 5% of exclusions for "random variation" Ameritech claims in its plan (p. 22).

Q. As noted above, the Ameritech performance remedy plan includes the designations high, medium, and low for all performance measurements that are eligible for remedies. What information does Ameritech witness Mr. Sal Fioretti provide regarding these designations?

A. In his testimony, Mr. Sal Fioretti provides his rationale regarding the origin of these designations. Mr. Fioretti points out that measures are classified as "not-high" (i.e., medium or low) for one of two reasons. First, the measurement could be a subset of another measurement, and second, the measurement could be measured in intervals so short as to have minimal impact on a CLECs ability to do business (see pp. 15-17). However, later in his testimony (see p. 28), Mr. Fioretti emphasizes only the "subset" explanation. However, I would like to point out that Mr. Fioretti acknowledges that he was not present when these measurements and their associated designations were created, which occurred in Texas. His assertions about the meaning of the performance measurement classification scheme are not valid on their face. Further, Mr. Fioretti is not a member of the CLEC community, and I recommend that the Commission rely on the experiences related by witnesses from the CLEC community regarding what impacts their ability to do business. In particular, AT&T witness Dr. Kalb reviews the process used in the development of the Texas remedy plan for categorizing performance measurements in this way. Further, Dr. Kalb charges that this classification scheme favors certain market entry schemes over others, which he characterizes as an allowance for discrimination (footnote 11, appearing on p. 21).

Above, I reviewed the experiences recounted by Mr. Cox and Ms. Moore regarding their experience in recent months with the Ameritech remedy plan. While I pointed out that their experience argues against the use of the k-exclusions, Ms. Moore in particular also argues against the high-medium-low designations applied to the performance measurement scheme (pp. 22-23).

Q. Please review your recommendation regarding the overall caps, in light of the direct testimony filed in this docket.

A. In his testimony, Ameritech witness Mr. Sal Fioretti states that the existing remedy plan "put at risk" $360 million in penalties in the first year of the plan's operation (p. 11, lines 20-21). Mr. Fioretti is in error in his assertion, in that his representation is not reflective of the annual penalty cap provided for in the current tariff. The existing tariff contains the maximum annual cap pursuant to the Illinois merger agreement, and provides the guidance for Ameritech Illinois in implementing its remedy plan. This tariff became effective in September 2000, and calls for only $90 million in total annual penalties.[8]

Q. Does this conclude your testimony?

A. Yes, it does.

[8] Ameritech tariff IL C.C. No. 20, Part 2, Section 10, Sheet 16, Sept. 12, 2000